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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,862	01/09/2002	Nobuhiro Kawamura	FUJY 19.313	8426
26304 7590 04/19/2007 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER JEAN GILLES, JUDE	
			ART UNIT	PAPER NUMBER
			2143	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No. 10/043,862	Applicant(s) KAWAMURA, NOBUHIRO	
	Examiner Jude J. Jean-Gilles	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 3-6, 14-17 and 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-13, 18 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/02/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to communication filed on 01/17/2007. Claimed priority is granted from foreign application No: 2001-285176 with a priority date of 09/19/2001.

Response to Amendment

1. This action is responsive to the application filed on 01/17/2007. Claims 1-25 are pending in the present application. Claims 1, 9, 18, and 25 are amended and claims 3-6, 14-17 and 19-22 are canceled by these amendments. No new matter is added. Claims 1, 2, 7-13, 18, 23-25 represent a method and apparatus for an "IP NETWORK SYSTEM HAVING PROVIDING SERVICE CONTROL FUNCTION."

Response to Arguments

2. Applicant's Request for Reconsideration filed on 01/17/2007 has been carefully considered but is not deemed fully persuasive. However, because there exists the likelihood of future presentation of this argument, the Examiner thinks that it is prudent to address Applicants' main points of contention.

A. It is respectfully submitted that the relied upon portions of Yamamura, col. 6, lines 52-67 and col. 7, lines 1-20 do not teach or suggest these features of amended claim 1. Previously some of these features had been recited in dependent claims such as 3-6. Independent claims 9, 18, and 25 include features similar to those described above and are therefore allowable for at least the same reasons as claim 1 is allowable.

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B. Claims 2, 7, 8, 10-13, and 23-24 depend from claims 1, 9, and 18, respectively, and are therefore allowable for at least the same reasons as claims 1, 9, and 18 are allowable.

A. The Examiner disagrees with the applicants' mischaracterization of the prior art of record. Amended claim 1 is taught in details by the prior art of record. Yamamura discloses the claimed invention in alternative language. The main point of contention of the applicants' is that in the previous Office action, the Examiner cited column 6, lines 52-67 to teach the limitation of the amended limitations of claim 1, and that the relied portion of Yamamura does not teach these limitations. The cited portion was just exemplary. Applicants are advised to review the entire prior art, not just the relied cited portion. Read column 6, lines 54-67; column 7, lines 1-8; column 7, lines 45-65; and column 8, lines 12-50 and see rejection of claim 1 below.

As to "Point B" it is the position of the Examiner that Lee in detail teaches the limitations of the above mentioned claims (see rejection below).

Examiner notes with delight that no new matter has been added and that the new claims are supported by the application as filed. However, applicant has failed in presenting claims and drawings that delineate the contours of this invention as compared to the cited prior art. Applicant has failed to clearly point out patentable novelty in view of the state of the art disclosed by the references cited that would overcome the 102(e) anticipation applied against the claims, the rejection is therefore sustained.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 2, 7-13, 18, 23-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamura et al (Yamamura), Patent No. 6,028,838.

Regarding **claim 1**, Yamamura discloses a providing service control device comprising:

a module obtaining performance information indicating a state of a traffic congestion from a monitor target network (column 30, lines 50-67; column 31, lines 1-33);

a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 31, lines 1-46); and

a control module determining the substitutionally providable service for every user on the basis of the obtained performance information and the contract data, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46); and

wherein said control module controls a server within a provider network, and has the corresponding service provided to said client terminal used by the user (column 6,

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lines 54-67; and column 7, lines 1-8; Note the controller 31 (control module) controls the navigation server within the service provider to correspond with user terminal 11);

said control module further changes a data size of data transmitted by said server to said client terminal as the corresponding service (column 7, lines 45-65; Note the role of the optimizing portion 44 which directly deals with the data size from the server to the terminal); and

the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (see column 7, lines 45-65; and column 8, lines 12-50).

Regarding **claim 2**, Yamamura discloses a providing service control device according to claim 1, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (column 1, lines 12-26).

Regarding **claim 7**, Yamamura discloses a providing service control device according to claim 1, further comprising a module notifying said client terminal of the obtained performance information (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 8**, Yamamura discloses a providing service control device according to claim 7, further comprising a module receiving a service level change request that responds to the performance information of which said client terminal has been notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 9**, Yamamura discloses a network system comprising:

(A) a providing service control device comprising:

(a) a module obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-33);

(b) a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-33); and

(c) a control module determining the substitutionally providable service on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46); and

(B)said client terminal comprising:

(d) a module independently obtaining performance information indicating a state of a traffic congestion from said monitored target network (column 30, lines 50-67; column 31, lines 1-33); and

(e) a module executing a service level change request on the basis of the independently obtained performance information (column 30, lines 50-67; column 31, lines 1-46); and

wherein said control module controls a server within a provider network, and has the corresponding service provided to said client terminal used by the user (column 6, lines 54-67; and column 7, lines 1-8);

said control module further changes a data size of data transmitted by said server to said client terminal as the corresponding service (column 7, lines 45-65); and the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (see column 7, lines 45-65; and column 8, lines 12-50).

Regarding **claim 10**, Yamamura discloses a network system according to claim 9, wherein said providing service control device further comprises a module notifying said client terminal of the obtained performance information, and said client terminal further comprises a module receiving the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 11**, Yamamura discloses a network system according to claim 10, wherein said providing service control device further comprises a module receiving the service level change request that responds to the performance information of which said client terminal has been notified (column 30, lines 50-67; column 31, lines 1-67), and

said client terminal further comprises a module executing the service level change request based on the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 12**, Yamamura discloses a network system according to claim 11, wherein said client terminal further comprises a module controlling said client

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terminal itself on the basis of any one of the independently obtained performance information and the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 13**, Yamamura discloses a network system according to claim 9, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (column 1, lines 12-26).

Regarding **claim 18**, Yamamura discloses a providing service control method comprising:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46); and

controlling a server within a provider network, and having the corresponding service provided to said client terminal used by the user (column 6, lines 54-67; and column 7, lines 1-8); and

changing a data size of data transmitted by said server to said client terminal as the corresponding service (column 7, lines 45-65);

wherein the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (see column 7, lines 45-65; and column 8, lines 12-50).

Regarding **claim 23**, Yamamura discloses a providing service control method according to claim 18, further comprising notifying said client terminal of the obtained performance information (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 24**, Yamamura discloses a providing service control method according to claim 23, further comprising receiving a service level change request that responds to the performance information of which said client terminal has been notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 25**, Yamamura discloses a readable-by-computer recording medium recorded with a program read by a computer to execute:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46); and

controlling a server within a provider network, and having the corresponding service provided to said client terminal used by the user (column 6, lines 54-67; and column 7, lines 1-8); and

changing a data size of data transmitted by said server to said client terminal as the corresponding service (column 7, lines 45-65);

wherein the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (see column 7, lines 45-65; and column 8, lines 12-50).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

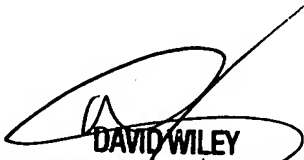
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-4000.

Jude Jean-Gilles

Patent Examiner

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DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2143

JJG

April 15, 2007